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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 DEBORAH MIRAMONTEZ,

9 Plaintiff,

10 v.

11 NANCY A. BERRYHILL, Acting
Commissioner of Social Security,

12 Defendant.

CASE NO. C16-1878-BAT

**ORDER GRANTING MOTION FOR
ATTORNEY'S FEES UNDER THE
EQUAL ACCESS TO JUSTICE ACT, 28
U.S.C. § 2412(d)**

13 Deborah Miramontez, the prevailing party in this Social Security disability appeal, moves
14 under the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d), for an award of attorney's
15 fees of \$5,185.79, as well as expenses of \$17.25. Dkt. 25. The Commissioner opposes the
16 motion, arguing that no fees should be awarded because her position was substantially justified.
17 Dkt. 27. The Court rejects the Commissioner's arguments and **GRANTS** plaintiff's motion.

18 The EAJA authorizes payment of attorney's fees to a prevailing party in an action against
19 the United States, unless the court finds that the government's position on the merits in the
20 litigation was "substantially justified." 28 U.S.C. § 2412(d)(1)(A). To show that its position was
21 "substantially justified" the government must demonstrate that its position had a reasonable basis
22 in both law and fact at each stage of the proceedings, including both the government's litigation
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1 position and the underlying agency action giving rise to the civil action. *Tobeler v. Colvin*, 749
2 F.3d 830, 832–34 (9th Cir. 2014).

3 Deviating from this standard, the Commissioner argues that the issue is “whether the
4 Commissioner was substantially justified despite the deficiencies in the ALJ’s decision.” Dkt. 27
5 at 2. However, the “position of the United States” includes *both* the government’s litigation
6 position and the underlying agency action giving rise to the civil action. *Meier v. Colvin*, 727
7 F.3d 867, 870 (9th Cir. 2014). Thus in assessing whether the government’s position is
8 substantially justified, a Court first considers the underlying agency action. *Id.* at 872. A court
9 need not address whether the government’s subsequent litigation position is justified when the
10 underlying agency position was not substantially justified. *Id.* at 872–73.

11 The Commissioner reasserts arguments that the Court has already rejected in reversing
12 the ALJ’s decision, and which the Court now rejects as establishing substantial justification. To
13 the extent the Commissioner raises new arguments, they cannot be relied upon to substantially
14 justify a prior position. Accordingly, the Court **GRANTS** Ms. Miramontez’s motion (Dkt. 25).

15 The Commissioner did not object to the amount of fees Ms. Miramontez requested. The
16 Court has reviewed Ms. Miramontez’s motion and supporting declarations and the record, and
17 finds the amount requested is reasonable. The Court therefore **ORDERS**:

18 Plaintiff is awarded attorney’s fees of \$5,185.79 and expenses of \$17.25, for a total award
19 of \$5,203.04. If the U.S. Department of the Treasury determines that Plaintiff’s EAJA fees,
20 expenses, and costs are not subject to offset allowed under the Department of the Treasury’s
21 Offset Program (TOPS), then the check for EAJA fees, expenses, and costs shall be made
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1 payable to Plaintiff's attorney, Howard D. Olinsky, 300 South State Street, Suite 420, Syracuse,
2 NY 13202.

3 DATED this 31st day of October, 2017.

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6 BRIAN A. TSUCHIDA
United States Magistrate Judge